

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

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The Honorable George Bush
President of the Senate
Washington, DC 20510

Dear Mr. President:

Submitted herewith, pursuant to the provisions of 5 U.S.C. 552(d), is the report of the Central Intelligence Agency concerning its administration of the Freedom of Information Act (FOIA) during calendar year 1982.

During 1982, 2,278 requests for information were logged and put into processing by the Agency, of which 1,010 were handled under the Freedom of Information Act. Several hundred additional request letters were received during the year but not formally processed pending receipt of additional information from the requesters. These incomplete requests were, without exception, requests for access to personal records, which, under the Agency's regulations, are usually processed under the provisions of the Privacy Act of 1974 (5 U.S.C. 522a) rather than the Freedom of Information Act. Production/workload statistics for CY 1982 are enclosed at Tab A. (Some of these statistics are necessarily tentative inasmuch as we sometimes have to reactivate "closed" cases or are able to "close out" cases retroactively.)

During CY 1982 the number of requests for information decreased by 752. Nevertheless, the Agency maintained its large expenditure of manpower on Freedom of Information, Privacy, and Executive Order requests, devoting the equivalent of 128 full time employees to this effort, despite the critical need to apply the expertise of our intelligence professionals to the Agency's primary mission. The dollar costs for personnel to sustain this effort amounted to over \$3.7 million. Of this total, 59% (\$2.2 million) was devoted to FOIA. During CY 1982 we were able to reduce our backlog of initial cases by 364, some of which were among the more complex cases that were contributing to the logjam in our queue system. Equally encouraging is the reduction in the number of cases awaiting processing in the administrative appeal phase. This year the Agency was able to reduce this backlog by 65 cases.

The administrative burden to the Agency over the past years has been considerable. Since 1975 we estimate that the

Agency has expended a total of \$21.3 million (\$10.9 million for FOIA) in just personnel costs for processing all requests for information. The benefit to the public resulting from this expenditure has been marginal at best. To be sure, some of the information released has benefited selected segments of the public. Yet, such instances are rare. Most records held by CIA are classified under the criteria of E.O. 12356 or predecessor orders and/or involve intelligence sources and methods. As such, this information is exempted from access under the Freedom of Information Act. When feasible, segregable portions of otherwise exempt records are released, but the public benefit arising from the disclosure of fragmentary and often inaccurate raw intelligence is dubious, and the result is sometimes even misleading. The provisions of the Act which permit the Agency to charge fees for record searches and for duplication are grossly inadequate for recovering even minimal costs. For all years, the Agency has collected a total of \$76,207 in fees. When compared with expenditures for administering just the FOIA, this amounts to less than one cent collected for every dollar spent. As anticipated, the Department of Justice guidelines promulgated in late December of 1980 increased the number of fee waivers granted. The Agency was able to collect only \$11,207 in fees and advance deposits during CY 1982. This, however, represents a 45% increase over CY 1981 collections. New guidelines issued in January 1983 may help alleviate the drain on public monies somewhat, in that the guidelines emphasize the "public benefit" aspect more strongly. Nevertheless, with review time constituting our greatest cost, FOIA processing can never become anywhere near self-supporting.

As explained in earlier reports, the Agency also faces some real problems in seeking to meet the time deadlines stipulated in the Act, and we believe these complicating factors are worth repeating. Because of the decentralized character of our systems of records, a number of files and indices must usually be searched to process a typical request. For example, a reasonably simple request may require as many as 21 records systems to be searched, a complex request over 100. Whenever relevant records are located, these must be reviewed with painstaking care by knowledgeable officers of the CIA to ensure no information is released which might damage national security, harm U.S. foreign relations, or reveal the identities of intelligence sources or methods. This critical analysis requires the expenditure of an inordinate amount of manpower. Moreover, it cannot be entrusted to FOIA officers hired just for the purpose of review, as is done in other agencies. Rather, this analysis and review requires the exercise of careful judgment by professional intelligence officers who have primary responsibility for vital programs of intelligence collection and analysis for the President and other policymakers. Experienced operations officers and analysts cannot be easily or readily acquired on the open market. It takes years of experience and training to develop a

top-quality intelligence officer. Resources the Agency allocates to the administration of the FOIA are in competition with priority intelligence requirements. Already, intelligence officers are being diverted from their primary duties, and, as DCI William J. Casey has testified, this diversion is impacting upon vital intelligence missions. As long as the volume of requests remains high, it seems unlikely that the Agency will be in a position in the foreseeable future to substantially reduce the processing backlog to the point where we would be able to respond within the time limits specified by the Act. In the meantime, in an effort to be fair to all, we have continued to follow the policy of handling requests on a first-received, first-processed basis. Unless a request essentially duplicates a previous request, long delays are inevitable under this policy. Some requesters, understandably impatient over the lack of response, file administrative appeals or go into early litigation, thereby further slowing the process as we move resources to meet the priority demands of litigation.

Although the administrative burden in terms of cost and diversion of professional expertise is the principal difficulty the Act poses to the Agency -- especially in view of the marginal value to the public of the material released -- there is the additional factor of its effect on our intelligence collection effort, as Director Casey and other senior officials have stated on numerous occasions. To operate effectively as a foreign intelligence gathering organization, we must be able to enlist the cooperation of individuals and foreign governments. Many potential sources have refused this cooperation, considering the risk of inadvertent disclosure too great, in part because our records -- even the most sensitive ones -- are subject to the provisions of FOIA. We can and do assure our sources that the Act provides exemptions to protect from disclosure both classified material and information relating to intelligence sources and methods and that we employ multiple layers of review to further ensure protection. Some, however, remain unconvinced. Many are aware that there is the high potential for error, and, despite the elaborate precautions, mistakes have been made resulting in the release of classified information. Furthermore, the more knowledgeable know that courts do review Agency classification decisions and that the potential exists for the Agency to be overruled.

In summary, the diversion of expertise from our primary mission, the cost, the time constraints required by FOIA, and the negative perceptions on the part of potential sources are the major problems we face in complying with the FOIA.

Nevertheless, we believe the Agency's performance is a conscientious one, and we continue to look for ways in which it can be improved without impairing national security.

Sincerely,

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Harry E. Fitzwater
Deputy Director
for
Administration

Enclosures

S. 774

S. 774 is the government-wide FOIA relief Bill which was unanimously reported favorably by the Senate Judiciary Committee last year (S. 1730 in the 97th Congress). This Bill contains several provisions that will be of particular benefit to the FBI.

S. 774, unlike Senator Goldwater's Bill, S. 1324, seeks to amend the FOIA itself. The amendments in S. 774 would do the following:

- Clarify several of the Act's exemptions and procedures to strengthen the protection given to information where disclosure would result in an unwarranted invasion of personal privacy, harm the public interest in law enforcement, injure the legitimate commercial interests of private parties who have submitted proprietary information to the government, or impede the effective collection of intelligence.
- Preclude the use of the Freedom of Information Act as a means to circumvent discovery rules by parties in litigation.
- Provide for expedited processing of requests from the media and others seeking information for broad public dissemination while establishing realistic time requirements for agencies to respond to requests and decide appeals.
- Establish procedures enabling submitters of confidential commercial or financial information to object to the government's release of such information.
- Permit the government to charge requesters fees that more closely reflect the actual costs of the government's search and review of documents.
- Add two new exemptions from the Act for records generated in legal settlements and records containing technical information the export of which is controlled by law.

While S. 774 was never intended to address any of the unique problems facing the CIA or the other agencies within the Intelligence Community, we would be required to comply with any changes made by enactment of this legislation. We have no objections to any of the proposed changes.

S. 774 has been reported out favorably from the Senate Judiciary Subcommittee on the Constitution, chaired by Senator Orrin Hatch (R, VT). It has just been reported out of full Committee (16 June) which means that the Committee will now be ready to consider our FOIA legislation on sequential referral from the SSCI.